IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18107 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANTOKBEN HIRABHAI PRAJAPATI WD/O.HIRABHAI PUNJABHAI PRAJA- - Petitioners

Versus

SPL.LAND ACQUISITION OFFICER AND DY.COLLECTOR - Respondent.

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Appearance :
MR KETAN I ACHARYA and MRS BK ACHARYA for Petitioners.
MS KRINA P.CALLA, A.G.P. for Respondent.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

By filing the instant petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus, or a writ of certiorari, or any other appropriate writ or order, to declare that the action of the respondent-authority of not making payment of compensation to the petitioners pursuant to the judgment rendered by the Division Bench of this Court in First Appeal No.539 of 1981 decided on March 22/23, 1991, is illegal, unjust and violative of fundamental rights guaranteed to the petitioners. The petitioners have further prayed to direct the respondent to deposit 50% of the total amount payable to the petitioners with this Court, pending admission and final hearing of the petition. The petitioners have also prayed to direct the Reference Court to disburse the amount payable to the original claimant i.e. deceased Hirabhai Punjabhai Prajapati, with interest, to the petitioners as per the order passed by the High Court in First Appeal No.539 of 1981, which was decided on March 22/23, 1991.

2. The petitioners No.1 to 4 claim to be the heirs and legal representatives of deceased Hirabhai Punjabhai Prajapati. The land belonging to deceased Hirabhai Punjabhai Prajapati situated at village Sughad, and the lands of others were acquired for extension of Gandhinagar-Koba Road upto Ahmedabad Aerodrome Road, for which a notification issued under Section 4(1) of the Land Acquisition Act, 1894 ["the Act" for short] was published in the Official Gazette on March 20, 1970 and erratum therein was published in the Official Gazette on October 29, 1970. After publication of declaration made under Section 6 of the Act in the Official Gazette, necessary notices were issued to the interested persons for determination of compensation payable to them. The Land Acquisition Officer awarded compensation to the deceased and others at the rate of Rs.1.20 Ps. per sq.mt. At the instance of the claimants, References were made under Section 18 of the Act

before the District Court, Ahmedabad (Rural) at Narol, which were registered as Land Acquisition Cases No. 216/78 to 220/78, 225/78, to 236/78. On appreciation of evidence adduced by the parties, the Reference Court awarded additional compensation at the rate of Rs. 1.60 Ps. per sq.mt. Feeling aggrieved, the deceased and others had preferred First Appeal Nos.539 of 1981 to 555 of 1981. The Division Bench comprising C.V.Jani and M.S.Parikh,JJ. by judgment dated March 22,23, 1991 allowed the appeals partly and granted additional compensation to the claimants at the rate of Rs. 4.20 Ps. per sq.mt. It may be mentioned that the petitioners had earlier filed Special Civil Application No.13257 of 2006 claiming the reliefs which are claimed in the instant petition. However, the same was permitted to be withdrawn and liberty was reserved to the petitioners to file a fresh petition on the same cause of action. Accordingly, the petition was disposed of by an order dated August 18, 2006. Pursuant to the liberty reserved, the petitioners

have filed the instant petition. The petitioners, who claim to be the heirs and legal representatives of deceased Hirabhai Punjabhai Prajapati, have maintained in the petition that they have not received the amount of compensation payable to the deceased pursuant to the judgment of the High Court. Under the circumstances, they have filed the instant petition and claimed reliefs to which reference is made earlier.

3. In Special Civil Application No.13257 of 2006, Mr. Ahmedhussain Aadambhai Malwat, who was Land Acquisition Officer, Gandhinagar, had filed affidavit-in-reply and made following statements on oath in Paragraphs 7 & 8 of the reply :

> "It further reveals from the record that according to the judgment and order passed by this Hon'ble Court, decree was drawn in each cases and pursuant to the same, the Road & Building Department, State of Gujarat had deposited an amount of Rs. 2,63,427/- in the Court by Demand Draft No.632919 dated 9.3.2000 in

the District Court, Ahmedabad Rural. A copy of Demand Draft No. 632919 dated 9.3.2000 is annexed hereto and marked as Annexure-R-1 to this affidavit-in-reply.

It is further submitted that in the aforesaid group of matters, the matters of the petitioners are covered and not only that in LAR No.233 of 1978 (First Appeal No.554 of 1981), the claimant Kalaji Lakhaji had filed a Darkhast Application No.1/96, and the same was withdrawn at the relevant point of time."

4. The instant petition was placed for admission hearing before the Court on August 25, 2006 and after hearing the learned Counsel for the petitioners, notice was issued. Ms.Krina P.Calla, learned A.G.P. on instructions, states that the amount payable to the deceased is already deposited by the respondent with the Reference Court and, therefore, the petitioners should be directed to file appropriate application before the Reference Court for withdrawal of the amount

payable to the deceased. From the averments made in Paragraphs 7 & 8 of the reply filed in Special Civil Application No.13257 of 2006, it is evident that the amount payable to the deceased is already deposited by the respondent with the Reference Court. Therefore, the first two prayers, claimed in the instant petition, cannot be granted. Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if the Reference Court is directed to consider the application, which may be submitted by the petitioners for withdrawal of the amount payable to the deceased in accordance with law.

For the foregoing reasons, the petition partly succeeds. The prayers made in Paragraphs 13(A) and 13(B) of the petition are rejected. It is held that the petitioners would be entitled to file an application before the Reference Court for withdrawal of the amount payable to the deceased pursuant to judgment rendered in First

Appeal Nos. 539 of 1981 to 555 of 1981 on March 22/23, 1991. If the application is filed by the petitioners for withdrawal of the amount payable to the deceased, the Reference Court shall verify, whether the applicants are the heirs and legal representatives of deceased Hirabhai Punjabhai Prajapati and thereafter the Reference Court shall pass appropriate orders for disbursement of amount in favour of the respective petitioners by Account Payee Cheque, in accordance with law as early as possible and without any avoidable delay. Rule is made absolute to the extent indicated above only. There shall be no order as to costs.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J]

(patel)